

Exhibit 14

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE
CITY OF ROANOKE

 SHARON G. WINGATE, Executor :
 of the Estate of DOUGLAS :
 GRAY WINGATE, Deceased, :

Plaintiff :

-vs-

INSIGHT HEATH CORP., et al., :

Defendants :
 -----JULY 9, 2013
3:00 P.M.HEARD BEFORE:
THE HONORABLE CHARLES N. DORSEYCENTRAL VIRGINIA REPORTERS
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The following cause came on to be heard on July 9, 2013, before the Honorable Charles N. Dorsey, Judge of the Circuit Court of the City of Roanoke, sitting at Roanoke, Virginia, when the following proceedings were had:

THE COURT: We have Wingate versus Insight, CL12254771 through 76, 13, 9 and 54, 57, and the Clerk has been kind enough to bring me a whole rack of files, which I haven't brought in here. I did bring one hoping it would be a sample of what's involved. I have the oath of the court reporter that's been entered. As to all those matters will be spread appropriately. Is the plaintiff ready?

MR. BYRD: Yes, Your Honor.

THE COURT: All right. The defendant ready?

MR. SHAW: Yes, we are, Your Honor.

THE COURT: Gentlemen, I apologize — due to some other matters going on, including the fact that we continue to be short of judges, not because of so much of the

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APPEARANCES:

GENTRY, LOCKE, RAKES & MOORE
 Roanoke, Virginia
 By: BENJAMIN D. BYRD, ESQ.
 J. SCOTT SEXTON, ESQ.

Counsel on behalf of the Plaintiff

BONNER KIERNAN TREBACH & CROCIATA
 Washington, DC
 By: CLINTON R. SHAW, JR., ESQ.
 CHRISTOPHER HASSELL, ESQ.

Counsel on behalf of Insight Heath Corp.

LECLAIR RYAN
 Roanoke, Virginia
 By: NANCY F. REYNOLDS, ESQ.
 Counsel on behalf of Dr. Mathis,
 Dr. O'Brien and Image Guided Pain Management

E X H I B I T S

NUMBER	DESCRIPTION	PAGE
	(None)	

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legislature now but because of health reasons -- I have not reviewed what we are doing. So what is it we are doing?

MR. BYRD: Your Honor, we are here on two matters. Well, technically, three. One is the motion for partial summary judgment as it relates to the affability of the Medical Malpractice Act to the defendant Insight Health Care.

THE COURT: I thought that was already conceded or entered, an order on that?

MR. BYRD: There was no order entered because of the removal that took place the night before the hearing on that. The related matter to that --

THE COURT: But there was an order entered, wasn't there, Mr. Sexton, on that?

MR. SEXTON: Your Honor, what happened, as you recall --

THE COURT: I don't recall. That's why I am asking.

MR. SEXTON: Let me refresh you. The day we were last before you, there were 11 motions for summary judgment set. The

<p style="text-align: right;">5</p> <p>1 defendant removed the Wingate matter to</p> <p>2 federal court the evening before, and so when</p> <p>3 we showed up the Wingate matter was not</p> <p>4 technically before Your Honor, but the other</p> <p>5 10 were. And on those 10 you have entered</p> <p>6 orders.</p> <p>7 So we took a little detour in this</p> <p>8 through federal court with Judge Wilson, and</p> <p>9 now we are back here.</p> <p>10 THE COURT: He sent them all back?</p> <p>11 MR. SEXTON: He sent everything back,</p> <p>12 yeah. I think all 19 of ours went over there</p> <p>13 at one point, and then they came back.</p> <p>14 THE COURT: Okay. Mr. Shaw, is this</p> <p>15 any different than the ones we have already</p> <p>16 done?</p> <p>17 MR. SHAW: No, it's not different in</p> <p>18 any way except that it wasn't entered and</p> <p>19 hasn't been.</p> <p>20 THE COURT: Anybody have any objection</p> <p>21 to getting that done?</p> <p>22 MR. SHAW: We are objecting to it,</p> <p>23 because we filed a motion or opposition to</p> <p>24 this motion for partial summary judgment and</p>	<p style="text-align: right;">7</p> <p>1 THE COURT: Well, you can understand</p> <p>2 from my standpoint how that would really seem</p> <p>3 like we are not making any progress at all.</p> <p>4 It seems like we are going backwards if we</p> <p>5 are going to revisit everything.</p> <p>6 MR. SHAW: I don't know that we have to</p> <p>7 revisit everything.</p> <p>8 THE COURT: I thought you said you</p> <p>9 wanted to revisit.</p> <p>10 MR. SHAW: See, we have been involved</p> <p>11 in discovery, so we have been moving forward.</p> <p>12 Depositions have taken place of a number of</p> <p>13 Insight witnesses. And in so doing, various</p> <p>14 witnesses have testified from Insight,</p> <p>15 radiology technologists, that they do have</p> <p>16 very specialized skills that fall within that</p> <p>17 rubric of being a healthcare provider.</p> <p>18 When we signed onto this, Your Honor,</p> <p>19 when we got this case back in early January,</p> <p>20 the Court needs to know that we were retained</p> <p>21 by an insurance company. Insight Health Corp</p> <p>22 wasn't our longstanding client, and we have</p> <p>23 been in the -- we have been in the throws of</p> <p>24 learning about their history, getting</p>
<p style="text-align: right;">6</p> <p>1 motion for leave to amend our answers.</p> <p>2 THE COURT: I thought you had already</p> <p>3 conceded on the Record before that you are</p> <p>4 not a healthcare provider.</p> <p>5 MR. SHAW: Well, we were talking about</p> <p>6 that, and when we said that -- we answered</p> <p>7 the request for admissions that we were not a</p> <p>8 healthcare provider, but we since in</p> <p>9 discovery have learned that we --</p> <p>10 THE COURT: That you are.</p> <p>11 MR. SHAW: That we are. You know, we</p> <p>12 are --</p> <p>13 THE COURT: So you are in a sort of</p> <p>14 weird position to have one set of cases where</p> <p>15 you have been -- an order has been entered</p> <p>16 that you have been not found to be a</p> <p>17 healthcare provider, but you are going to</p> <p>18 contend in these that you are.</p> <p>19 MR. SHAW: Yes, and we are going to ask</p> <p>20 the Court to revisit the order and allow us</p> <p>21 to vacate those orders and allow the issue to</p> <p>22 be decided as to whether or not we are a</p> <p>23 healthcare provider on the merits of that</p> <p>24 issue as opposed to --</p>	<p style="text-align: right;">8</p> <p>1 acquainted with them and learning about their</p> <p>2 business. And also during the course of</p> <p>3 discovery and the testimony of Doctors Mathis</p> <p>4 and O'Brien, we have learned more about the</p> <p>5 roles of the various people that work at</p> <p>6 Insight.</p> <p>7 When we answered, Your Honor, the</p> <p>8 request for admissions, we looked to what</p> <p>9 little discovery we had. But more</p> <p>10 importantly what we had was the management</p> <p>11 services agreement, which is the contract</p> <p>12 between Insight Health Corp and IGPM, the</p> <p>13 corporate name for Doctors Mathis and</p> <p>14 O'Brien. And we --</p> <p>15 THE COURT: Let me interrupt you for a</p> <p>16 second. That's one issue. But I understood,</p> <p>17 Mr. Byrd, there were two issues?</p> <p>18 MR. BYRD: Right, Your Honor. It's</p> <p>19 actually three. Their motion to amend the</p> <p>20 request for admission, which a notice of</p> <p>21 hearing was filed --</p> <p>22 THE COURT: Which is still going back</p> <p>23 to the same issue about the healthcare</p> <p>24 provider.</p>

<p style="text-align: right;">9</p> <p>1 MR. BYRD: Correct, Your Honor. And</p> <p>2 then the other was a pretrial -- just a Rule</p> <p>3 4:13 conference just to let you know what all</p> <p>4 had happened since the cases have come back</p> <p>5 and what all we needed to get the cases</p> <p>6 moving.</p> <p>7 THE COURT: All right. I'm sorry,</p> <p>8 Mr. Shaw, but now let me just ask you the</p> <p>9 same thing. Are those three things, from</p> <p>10 your perspective, why we are here?</p> <p>11 MR. SHAW: Yes.</p> <p>12 THE COURT: Okay. Now go ahead with</p> <p>13 what you have got.</p> <p>14 MR. SHAW: We are not asking the Court</p> <p>15 to determine today whether Insight Corp is or</p> <p>16 is not covered by the malpractice cap.</p> <p>17 THE COURT: What are you asking?</p> <p>18 MR. SHAW: We are just asking that this</p> <p>19 issue be dealt with at a later time. During</p> <p>20 the course of discovery, various information</p> <p>21 is going to come forward that it's either</p> <p>22 going to show that we are a healthcare</p> <p>23 provider or we are not. We contend that</p> <p>24 there is plenty of evidence now that we are a</p>	<p style="text-align: right;">11</p> <p>1 that this person didn't live up to their</p> <p>2 duties.</p> <p>3 THE COURT: You have got all that in</p> <p>4 your motion.</p> <p>5 MR. SHAW: Yes.</p> <p>6 THE COURT: Okay.</p> <p>7 MR. SHAW: And there are two motions.</p> <p>8 There is one -- there is one motion, Your</p> <p>9 Honor --</p> <p>10 THE COURT: To amend admissions and for</p> <p>11 reconsideration of partial summary judgment.</p> <p>12 MR. SHAW: Right, exactly.</p> <p>13 THE COURT: Those are the two motions.</p> <p>14 MR. SHAW: And those are for the ten</p> <p>15 cases where the summary judgment has been</p> <p>16 entered.</p> <p>17 MR. BYRD: Well, Your Honor, I hate to</p> <p>18 interrupt, but I did not receive any notices</p> <p>19 of hearing for those ten cases.</p> <p>20 THE COURT: Don't worry about it.</p> <p>21 MR. BYRD: Okay.</p> <p>22 THE COURT: We will sort all that out.</p> <p>23 I am just trying to figure out what the</p> <p>24 parameters are right now.</p>
<p style="text-align: right;">10</p> <p>1 healthcare provider under the definition as</p> <p>2 is described in the act. And that's what --</p> <p>3 that's what my -- the pleadings are that I</p> <p>4 have submitted to the Court, but I would be</p> <p>5 happy to discuss them.</p> <p>6 The other thing is that plaintiff's</p> <p>7 counsel in this case is changing its gears a</p> <p>8 little, too. In the course of discovery they</p> <p>9 have learned that there was a thing called a</p> <p>10 microbiology report and that some of them</p> <p>11 were missing, and that various employees of</p> <p>12 Insight, radiology techs, were looking for</p> <p>13 those reports, but in the course of getting</p> <p>14 those reports had not -- had not notified the</p> <p>15 doctors about this and they were looking for</p> <p>16 them. And now there is a -- there is sort of</p> <p>17 a negligence spin. They are putting an</p> <p>18 emphasis on this inaction by the radiology</p> <p>19 tech and not saying there was a missing</p> <p>20 report and saying that, basically, our</p> <p>21 licensed technologist made a big mistake.</p> <p>22 And under those circumstances, we would say,</p> <p>23 yeah, we need coverage under the malpractice</p> <p>24 act because they are going to be alleging</p>	<p style="text-align: right;">12</p> <p>1 MR. SHAW: Your Honor, the bottom line</p> <p>2 is when we answered this the case was in a</p> <p>3 different place, and we were looking at a</p> <p>4 management services agreement --</p> <p>5 THE COURT: It was on its way to</p> <p>6 federal court.</p> <p>7 MR. SHAW: We were trying to get into</p> <p>8 federal court. We were trying to find a way</p> <p>9 to bring NECC, the maker of the tainted</p> <p>10 steroid, into the case. We were getting,</p> <p>11 basically, a new case every day. We have</p> <p>12 since been given -- six more cases have been</p> <p>13 filed where we have answered this particular</p> <p>14 question the other way, that we are in fact a</p> <p>15 healthcare provider, where in fact before we</p> <p>16 admitted that we were not a healthcare</p> <p>17 provider.</p> <p>18 So now we are in a situation where</p> <p>19 there is some instances where we are and some</p> <p>20 instances where we are not. And it's very</p> <p>21 early on in the case law -- I mean, the Court</p> <p>22 has discretion, clearly. In some of the</p> <p>23 cases that we have submitted to the Court,</p> <p>24 this has been permitted, this amendment has</p>

<p style="text-align: right;">13</p> <p>1 been permitted, within three months of trial.</p> <p>2 We are over nine months away from trial and</p> <p>3 discovery has not gone that far. We would</p> <p>4 submit that there has been no prejudice. And</p> <p>5 the burden of having to address this issue</p> <p>6 does not amount to prejudice. Inconvenience</p> <p>7 is not a prejudice, and that's taken right</p> <p>8 out of the case law that we have submitted to</p> <p>9 the Court.</p> <p>10 THE COURT: But you don't want me to do</p> <p>11 anything today. You just want me to read it</p> <p>12 and decide it later.</p> <p>13 MR. SHAW: That would be fine, Your</p> <p>14 Honor.</p> <p>15 THE COURT: I'm just asking what you</p> <p>16 want.</p> <p>17 MR. SHAW: Give us the chance to --</p> <p>18 give us the leave to amend our answers to</p> <p>19 request for admissions so that they can be</p> <p>20 consistent with the last six that we have</p> <p>21 answered. And, you know, Your Honor, under</p> <p>22 the circumstances --</p> <p>23 THE COURT: I have to tell you, I have</p> <p>24 never had that request made, but I like it,</p>	<p style="text-align: right;">15</p> <p>1 order.</p> <p>2 THE COURT: Yeah, we are going to do</p> <p>3 all that separate.</p> <p>4 MR. SHAW: That would be great.</p> <p>5 THE COURT: I want to get this one</p> <p>6 finished first. Then Mr. Byrd, on this --</p> <p>7 and Mr. Sexton, you were lead counsel last</p> <p>8 time, and I am assuming by seating and by --</p> <p>9 you don't usually give up the roster to</p> <p>10 anyone easily, and since you have been doing</p> <p>11 it, I assume this is with your blessing.</p> <p>12 MR. SEXTON: It's out of desperation.</p> <p>13 The trial that just got canceled that you are</p> <p>14 probably aware of has had me otherwise</p> <p>15 occupied.</p> <p>16 THE COURT: It didn't get canceled,</p> <p>17 Mr. Sexton. It just got set over.</p> <p>18 MR. SEXTON: Can we negotiate about</p> <p>19 that? I am open to making deals at this</p> <p>20 point.</p> <p>21 THE COURT: Mr. Byrd?</p> <p>22 MR. BYRD: Yes, Your Honor.</p> <p>23 THE COURT: Do you have any -- and I</p> <p>24 understand -- I don't mean to make light of</p>
<p style="text-align: right;">14</p> <p>1 and I certainly appreciate the candor and</p> <p>2 give -- and compliment the candor. When is</p> <p>3 the trial date set?</p> <p>4 MR. SHAW: In late April of next year.</p> <p>5 THE COURT: Okay.</p> <p>6 MR. SHAW: And Your Honor, I'd also</p> <p>7 like to introduce you to Chris Hassell. He</p> <p>8 is the partner -- lead counsel in the case.</p> <p>9 THE COURT: All right.</p> <p>10 MR. SHAW: I inadvertently did not do</p> <p>11 that.</p> <p>12 THE COURT: That's all right. I will</p> <p>13 meet him -- and I apologize -- since I met</p> <p>14 you and I knew Ms. Reynolds down there. He</p> <p>15 is in good company, so I figured he must be</p> <p>16 all right, too.</p> <p>17 So in terms of those issues, is that</p> <p>18 all you have today?</p> <p>19 MR. SHAW: Yes.</p> <p>20 THE COURT: And you said that with a</p> <p>21 good deal of hesitation, so do you got</p> <p>22 something else?</p> <p>23 MR. SHAW: Well, we were hopefully</p> <p>24 going to get -- hope to get a scheduling</p>	<p style="text-align: right;">16</p> <p>1 it. I am not disparaging the numbers in the</p> <p>2 notice, but, really, at this juncture if I am</p> <p>3 going to do it I am going to do it for</p> <p>4 everybody in every case, and if I am not</p> <p>5 going to do it I am not going to do it for</p> <p>6 any cases. I mean, the notice, vis-a-vis</p> <p>7 notices, seems to me doesn't really matter.</p> <p>8 MR. BYRD: I understand, Your Honor. I</p> <p>9 just wanted to -- I only prepared for the</p> <p>10 Wingate matter, specifically.</p> <p>11 THE COURT: The issue is the same</p> <p>12 regardless, isn't it?</p> <p>13 MR. BYRD: They are. However,</p> <p>14 procedurally as far as when things were filed</p> <p>15 and when they were sent to Mr. Hassell is a</p> <p>16 little bit different that I hadn't looked at.</p> <p>17 THE COURT: And that -- if that becomes</p> <p>18 necessary, then I agree with you and I will</p> <p>19 take a look at it. But, you know, it seems</p> <p>20 to me that it's -- seems to me that it's</p> <p>21 probably a larger issue than one that needs</p> <p>22 to get dealt with on a purely procedural</p> <p>23 basis. But maybe not, so --</p> <p>24 MR. BYRD: Sure.</p>

<p style="text-align: right;">17</p> <p>1 THE COURT: Have you stated everything</p> <p>2 that you want in terms of authority and</p> <p>3 writing that you want to say?</p> <p>4 MR. BYRD: No, Your Honor, I have not.</p> <p>5 We didn't file a reply to their motion</p> <p>6 because it was going to be before you anyway</p> <p>7 and we would just say it all here regardless.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. BYRD: If I may, Your Honor, I</p> <p>10 think it's important to go back through a</p> <p>11 procedural history of the case so that all of</p> <p>12 this and what's been discussed is in the</p> <p>13 proper context. So if I am longwinded, I</p> <p>14 apologize in advance.</p> <p>15 THE COURT: You-all got it set for</p> <p>16 hearing. Ms. Butenschoen is taking it down,</p> <p>17 so it's all fine.</p> <p>18 MR. BYRD: As you know, Your Honor,</p> <p>19 Mr. Wingate received an ESI at Insight up on</p> <p>20 Franklin Road on September 6 last year and</p> <p>21 died 12 days later. Ms. Wingate then</p> <p>22 qualified as executor of Mr. Wingate's estate</p> <p>23 and filed suit in this Court on December 27</p> <p>24 of last year. The same day, Mr. Sexton</p>	<p style="text-align: right;">19</p> <p>1 national provider of diagnostic imaging</p> <p>2 services, which squarely would put Insight on</p> <p>3 notice that an allegation had been made</p> <p>4 pertaining to the practice of medicine.</p> <p>5 Paragraph 22, Insight advertised to the</p> <p>6 public that it offered the highest quality of</p> <p>7 care through a network of outpatient imaging</p> <p>8 centers. Paragraph 24 mentions the provision</p> <p>9 of pain management image guided therapeutics.</p> <p>10 Paragraph 28 mentions that Doctor Mathis, one</p> <p>11 of Ms. Reynolds' clients, had allegedly been</p> <p>12 designated by Insight as a medical director.</p> <p>13 There are also allegations as to the</p> <p>14 employment relationship between Insight</p> <p>15 Health and Ms. Reynolds' clients, two of</p> <p>16 Ms. Reynolds' clients, Doctors Mathis and</p> <p>17 O'Brien.</p> <p>18 Paragraph 45, among other things,</p> <p>19 mentions that Insight Health acted through</p> <p>20 secretaries, nurses, technicians, staff and</p> <p>21 personnel. And the technologists are the</p> <p>22 type of people that we are referring to there</p> <p>23 that were mentioned by Insight in its</p> <p>24 argument.</p>
<p style="text-align: right;">18</p> <p>1 e-mailed the complaint in that case to</p> <p>2 Mr. Hassell.</p> <p>3 And the reason I bring this up is</p> <p>4 because the complaint contains five counts,</p> <p>5 as well as a number of pertinent allegations</p> <p>6 regarding the provision of healthcare</p> <p>7 services that would put Insight on notice</p> <p>8 that allegations had been made, that they</p> <p>9 would be a healthcare provider, and that they</p> <p>10 would need to look into that issue more</p> <p>11 fully, especially when they respond to the</p> <p>12 complaint, which has not been done as of yet</p> <p>13 because of the pending demurrer that's before</p> <p>14 the Court.</p> <p>15 The counts are negligence per se,</p> <p>16 violation of Virginia Consumer Protection</p> <p>17 Act, negligence gross, negligence in fraud.</p> <p>18 Then there are contained within the complaint</p> <p>19 a number of allegations, including a</p> <p>20 certification pursuant to Virginia Code</p> <p>21 Section 8.01-50.1, which Your Honor is</p> <p>22 very well familiar with.</p> <p>23 Paragraph 15 alleges that Insight</p> <p>24 Health advertised to the public that it was a</p>	<p style="text-align: right;">20</p> <p>1 Now, of interest, Paragraph 54 mentions</p> <p>2 that Insight had a duty to act as reasonable</p> <p>3 and prudent healthcare providers, and it goes</p> <p>4 on from there. There is allegations about</p> <p>5 informed consent and the duty to provide</p> <p>6 reasonable care to Mr. Wingate.</p> <p>7 Now, from that, that would begin</p> <p>8 research in looking into whether Insight</p> <p>9 Health Corp qualifies as healthcare provider,</p> <p>10 is or is not a healthcare provider.</p> <p>11 Now, shortly after the complaint was</p> <p>12 filed and then served upon Insight Health</p> <p>13 Corp, Mr. Sexton received a phone call from</p> <p>14 counsel for Insight Health Corp in which it</p> <p>15 was stated that Insight Health Corp was not a</p> <p>16 healthcare provider and that we should make</p> <p>17 some changes to our -- Ms. Wingate should</p> <p>18 make changes to her complaint as a result of</p> <p>19 that.</p> <p>20 The request for admissions were served</p> <p>21 the following day on February 1. And there</p> <p>22 is two that are at issue and before the</p> <p>23 Court. And they are very specific, Your</p> <p>24 Honor. The first one says -- it gave Insight</p>

<p style="text-align: right;">21</p> <p>1 a choice. Insight could choose what it 2 wanted to be. The first request for 3 admissions says -- 4 THE COURT: They don't have any 5 argument about that. They said they weren't. 6 MR. BYRD: That's right, Your Honor. 7 THE COURT: They changed their mind is 8 all. 9 MR. BYRD: That's what -- I will jump 10 ahead then, Your Honor. When answering a 11 request for admission and responding to it, 12 an obligation is on the party to conduct 13 reasonable inquiry. You cannot say you don't 14 have knowledge or you are unable to admit or 15 deny it without conducting reasonable 16 inquiry. Based upon the information -- 17 THE COURT: If you say you don't have 18 knowledge, you don't have knowledge. 19 MR. BYRD: Right. But that's got to be 20 based on the information known or readily 21 attainable to you. 22 Now, what is at issue in Insight's 23 motion and its reason to amend its request 24 for admission responses is that Insight</p>	<p style="text-align: right;">23</p> <p>1 knowledge of what Ms. Boros and Ms. DeLong 2 did while working for Insight in the course 3 and scope of their employment is imputed and 4 attributable to Insight. None of that is 5 new. 6 There are federal cases, which I am 7 sure Your Honor is aware. The Court can look 8 to federal cases and decide -- in 9 interpreting the scope of Rule 4:11, because 10 I believe it was the Shakeen case which noted 11 a similarity to the federal rule in the 12 federal case or instruction. When Courts 13 have permitted amendments of -- 14 THE COURT: It's unusual that you would 15 go to federal cases. 16 MR. BYRD: In this case. 17 THE COURT: In any case. 18 MR. BYRD: That's right. 19 THE COURT: Okay. Go ahead. 20 MR. BYRD: But when courts have 21 permitted amendments is when truly new 22 information has been learned. I remember 23 there was one case where it was a trademark 24 dispute and the U.S. Trademark and Patent</p>
<p style="text-align: right;">22</p> <p>1 learned apparently for the first time what 2 its employees actually do on a day-to-day 3 basis and what their role is. Now, Insight 4 Health Corp entered into the management 5 services agreement that was referenced by 6 Insight on the 8th of July of 2010, well 7 before Mr. Wingate presented to Insight, well 8 before the complaint was filed, and well 9 before the request for admissions were served 10 and responded to. I believe Insight 11 officially took over sometime around December 12 of 2010. And at that time, as the parties 13 have testified to during depositions, Insight 14 trained the staff, Insight put in a new 15 computer system. Insight knew what the 16 employees, Sharon Boros and Karen DeLong, 17 whose testimony is at issue as far as a 18 reason to change or amend the request for 19 admission responses, all of that was known to 20 Insight at the time they responded to the 21 request for admissions, which are at issue. 22 So there is no new information here that 23 would justify an amendment. None of this is 24 new to Insight. Under agency law, the</p>	<p style="text-align: right;">24</p> <p>1 Office had issued an opinion saying that the 2 trademark wouldn't cause confusion, and one 3 of the parties said, well, based upon this we 4 would ask the Court for permission to change 5 our response, and that was granted. 6 Other times where courts have permitted 7 a change in the request for admission 8 responses has been when upholding the request 9 for admission responses would essentially 10 eliminate any trial on the merits. Any 11 defense to any of the merits of the case. 12 And in fact, Rule 4:11 itself states 13 that the Court may permit withdrawal or 14 amendment when the presentation of the merits 15 of the action will be subserved thereby and 16 the party who obtained the admission fails to 17 satisfy the Court that withdrawal or 18 amendment will prejudice him in maintaining 19 his action or defense on the merits. 20 Before you get to the prejudice 21 problem, Your Honor, before the Court could 22 permit an amendment, there has to be a 23 showing that somehow the trial of the merits 24 of the case will be prejudiced as a result of</p>

<p style="text-align: right;">25</p> <p>1 the standing request for admission responses. 2 And that simply cannot be done in this case, 3 Your Honor. Insight Health Corp is still 4 free on every ground to defend all of the 5 allegations that Ms. Wingate has made against 6 it, and the same is true in all the other 7 cases. Insight Health Corp can defend on 8 liability, say it did not violate Virginia 9 Consumer Protection Act, can say it did not 10 commit fraud, it can defend on causation, it 11 can defend on the amount of damages. 12 What Ms. Wingate is seeking relief on 13 is procedural matters only. Namely, what 14 sort of witnesses she can call. We are 15 trying to eliminate things like the active 16 clinical practice test at trial, and, Your 17 Honor, I will represent to the Court that as 18 a result of the request for admission 19 responses Ms. Wingate has retained a 20 consultant she would not have otherwise 21 obtained but for the admissions given. And 22 specifically, Your Honor, the statements that 23 were made at the last hearing that we had by 24 Insight Health Corp in which it was stated</p>	<p style="text-align: right;">27</p> <p>1 In no way will it change Insight's ability to 2 defend the case on whatever ground or 3 whatever theory it would so choose. Thank 4 you, Your Honor. 5 THE COURT: Anything else on those 6 issues? 7 MR. SHAW: Yes, Your Honor. 8 THE COURT: I figured. 9 MR. SHAW: Your Honor, we are not 10 talking about whether we are not on notice or 11 whether we were put on notice by the 12 complaint. That's a smoke screen. The 13 bottom line is that Rule 4:11(b) sets forth 14 the standard, and the standard is simply 15 this: A trial court may exercise its 16 discretion to permit such withdrawal or 17 amendment, one, when the presentation of the 18 merits of the action will be subverted 19 thereby. In other words, would be consistent 20 with the true facts of the case. 21 THE COURT: And. 22 MR. SHAW: And the party who obtained 23 the admission fails to satisfy the Court that 24 withdrawal or amendment will prejudice him in</p>
<p style="text-align: right;">26</p> <p>1 that we are not a healthcare provider so I 2 don't understand -- what I don't understand 3 is why we are seeking advisory opinion from 4 the Court when by operation of law we have 5 already been found to be not a healthcare 6 provider. Insight said we are saying we are 7 not a healthcare provider. We are not 8 subject to the cap. We can't use that as an 9 affirmative defense or a defense to damages. 10 It's entered by operation of law. 11 Now, nothing has changed at this time. 12 There is no evidence before the Court except 13 that Insight Health Corp is not a healthcare 14 provider. All we are asking for is what Your 15 Honor was going to give us at the last 16 hearing -- was going to give us, Wingate, at 17 the last case before the case was ultimately 18 moved to federal court and then, of course, 19 returned, and now we are back here. 20 There is no basis to permit a 21 withdrawal or an amendment at this time, 22 because again, Your Honor, the trial on the 23 merits will in no way be impacted as a result 24 of upholding the request for admissions here.</p>	<p style="text-align: right;">28</p> <p>1 maintaining his action or defense on the 2 merits. And there is no prejudice. We 3 haven't progressed so far in this case that 4 there is some sort of deep prejudice or any 5 kind of prejudice that's been suffered by the 6 plaintiff in this case, other than perhaps 7 the inconvenience of having to deal with this 8 issue again. 9 THE COURT: The prejudice isn't meant 10 in terms of the remedy sought, though. 11 MR. SHAW: No. Actually, the case law, 12 and I am hoping that the Court will read 13 before making a decision on this -- 14 THE COURT: I will try and do that. 15 MR. SHAW: Thank you, Your Honor. The 16 case law is very clear. The amendment won't 17 prejudice the plaintiff. Under the second 18 prong, a party is prejudiced by amendment or 19 withdrawal if that party is now any less able 20 to obtain the evidence required to prove the 21 matter which was admitted that it would have 22 been at the time the admission was made. The 23 case should be decided on whether we are a 24 healthcare provider or not under the law. We</p>

<p style="text-align: right;">29</p> <p>1 have in discovery and in looking at this</p> <p>2 case -- and not just looking at the</p> <p>3 management services agreement, which states</p> <p>4 in very bold language that we don't provide</p> <p>5 medical care services -- and perhaps that was</p> <p>6 the problem. As we were looking at it we</p> <p>7 were looking at are we doctors or not.</p> <p>8 Perhaps that was a mistake that I made, Your</p> <p>9 Honor, in looking at this. But the bottom</p> <p>10 line is, whether or not we are a healthcare</p> <p>11 provider, the case law is very broad in this</p> <p>12 area, and it's been getting broader by -- as</p> <p>13 the cases have progressed over the years</p> <p>14 since the statute and the act was entered.</p> <p>15 Your Honor, we have technologists who</p> <p>16 have very specialized training. They have</p> <p>17 learned how to use this equipment, they have</p> <p>18 to get it -- they have to be certified by the</p> <p>19 state. Virginia has to certify them in order</p> <p>20 to use this equipment. We did not know this</p> <p>21 when we entered -- when we answered this.</p> <p>22 There is no prejudice to the plaintiff that</p> <p>23 that issue is now reopened.</p> <p>24 We are not saying we want the Court to</p>	<p style="text-align: right;">31</p> <p>1 THE COURT: What's the status of that?</p> <p>2 MR. SHAW: It's in bankruptcy, Your</p> <p>3 Honor. Mr. Sexton knows people on the</p> <p>4 steering committee, and we are awaiting word</p> <p>5 from the MDL and the judges up there. The</p> <p>6 steering committee is working on a way to try</p> <p>7 to invite us into that.</p> <p>8 THE COURT: Okay.</p> <p>9 MR. SHAW: But for right now, Your</p> <p>10 Honor, we are dealing with this here and now,</p> <p>11 and we are in state court, and that's the way</p> <p>12 we are pursuing this. And, Your Honor --</p> <p>13 THE COURT: You don't have any other</p> <p>14 choice.</p> <p>15 MR. SHAW: Perhaps, and that's fine,</p> <p>16 because we really -- we really think this</p> <p>17 case could proceed forward on the truth. And</p> <p>18 the truth is we are a healthcare provider,</p> <p>19 and we are because we have licensed</p> <p>20 technologists and radiologists. And more</p> <p>21 over, we have physicians -- we are an</p> <p>22 independent contractor to the physicians in</p> <p>23 this practice, and that's something else that</p> <p>24 we have argued in our brief. And I would ask</p>
<p style="text-align: right;">30</p> <p>1 flip around and say yes, you know, enter a</p> <p>2 summary judgment motion for us right now</p> <p>3 saying that we are a healthcare provider. We</p> <p>4 are asking that this remain open and be</p> <p>5 elucidated in the facts of the case as we</p> <p>6 progress along.</p> <p>7 Now, if somewhere along the way in the</p> <p>8 course of discovery and more depositions are</p> <p>9 taken plaintiff's counsel wants to make a</p> <p>10 motion later on -- we might want to make a</p> <p>11 motion later on on the same -- to say that we</p> <p>12 are a healthcare provider. The bottom line</p> <p>13 is it's just too early. We are nine months</p> <p>14 away from trial, and we have just barely</p> <p>15 really begun discovery. At this point they</p> <p>16 were asking us to do all these things at the</p> <p>17 same time. We haven't even answered the</p> <p>18 complaint, and we are busy trying to get this</p> <p>19 thing removed to federal court, we are trying</p> <p>20 to find a way to bring in the true party in</p> <p>21 the case that caused this terrible meningitis</p> <p>22 outbreak, the maker of the steroid.</p> <p>23 THE COURT: What's the status of that?</p> <p>24 MR. SHAW: Excuse me?</p>	<p style="text-align: right;">32</p> <p>1 that the Court take a look at it and decide</p> <p>2 on that.</p> <p>3 THE COURT: All right.</p> <p>4 MR. BYRD: May I, Your Honor?</p> <p>5 THE COURT: Sure.</p> <p>6 MR. BYRD: Regarding the argument that</p> <p>7 the responses to these were due before their</p> <p>8 answer was due, before Insight's answer was</p> <p>9 due, Insight chose not to answer the</p> <p>10 complaint. Insight could have demurred and</p> <p>11 answered, which is precisely what</p> <p>12 Ms. Reynolds' clients did. Ms. Reynolds'</p> <p>13 clients filed pleas, demurrers, and answered</p> <p>14 the complaint. So if there is prejudice to</p> <p>15 Insight as a result of a failure to answer</p> <p>16 the complaint, that prejudice is entirely of</p> <p>17 Insight's making and could not be used as an</p> <p>18 excuse, I would submit, to allow them to</p> <p>19 change the request for admission responses.</p> <p>20 Now, there seems to have been some</p> <p>21 statement that there was some confusion about</p> <p>22 we are not doctors and look at the management</p> <p>23 services agreement and so that's why we</p> <p>24 answered the way that we answered, Judge.</p>

<p style="text-align: right;">33</p> <p>1 But you have the request for admission before 2 you, and the request for admissions were very 3 specific. There was nothing there designed 4 to trick anybody. It didn't say just admit 5 you are a healthcare provider. Admit you are 6 not a healthcare provider. It said admit you 7 are a healthcare provider as defined in 8 Virginia Code Section 8.01-581.1. Admit you 9 are not a healthcare provider as defined in 10 Virginia Code Section 8.01-581.1. Those 11 requests told Insight precisely where to look 12 to begin answering and responding to the 13 request for admissions and where the 14 reasonable inquiry ought to begin.</p> <p>15 Now, I guess they are conceding that 16 they did not -- Insight is conceding that it 17 did not look at the code section as it should 18 have. Regardless, even looking at the 19 management services agreement, Your Honor, 20 the argument that's being made now about the 21 independent contractor relationship was 22 equally available to Insight at the time that 23 it responded as it is now in the pleadings 24 that are filed.</p>	<p style="text-align: right;">35</p> <p>1 untimely, and I am getting a little bit 2 aside, but, again, Judge, the sand seemed to 3 keep shifting. We are going to be here in 4 state court, we are going to set for trial; 5 no, now we are going up to federal court. 6 Now Ms. Wingate has to spend a lot of money 7 and resources fighting against the 8 multi-district litigation, the bankruptcy 9 court, the Western District of Virginia, all 10 to bring the case back on a removal which was 11 conceded by Insight at oral argument to be 12 untimely.</p> <p>13 Now, in addition to that, Insight has 14 said we are not a healthcare provider. As a 15 result of that, Ms. Wingate relied on it and 16 retained someone she would not otherwise have 17 retained. Now, oh, sorry, we are a 18 healthcare provider. Ms. Wingate needs to be 19 able to have some understanding of the order 20 and procedure under which her case will be 21 tried, and it needs to be set. And what she 22 is asking for is exactly what the Court was 23 going to give her at the hearing on April 5 24 before the case was removed untimely. Thank</p>
<p style="text-align: right;">34</p> <p>1 Now, to address the prejudice impact, 2 Your Honor, again, I would note Ms. Wingate 3 has retained a consultant she would not 4 otherwise have retained as a result of this. 5 This decision is going to have some impact 6 and ramifications as far as what witnesses 7 may be called and procedural elements about 8 what witnesses may be qualified to testify as 9 to what matters.</p> <p>10 There is also an ongoing issue with a 11 change in litigation strategies and keeping 12 Ms. Wingate from being able to prepare her 13 case and know what to expect. Judge, when we 14 were here the last time, although I myself 15 was not here, the case had already been set 16 for trial. There was a hearing on a motion 17 for partial summary judgment and there was 18 some hearings on some pleadings filed by 19 Ms. Reynolds' clients. And all of a sudden 20 without any notice to anyone, the case was 21 jerked up to federal court.</p> <p>22 Now, the Western District of Virginia 23 didn't take too kindly to the case coming up 24 there. It was conceded that that removal was</p>	<p style="text-align: right;">36</p> <p>1 you, your Honor.</p> <p>2 THE COURT: Thank you. Want to respond 3 to that?</p> <p>4 MR. SHAW: No, Your Honor.</p> <p>5 THE COURT: Fair enough. Gentlemen, I 6 will take a look at that and get back with 7 you as to that. I am assuming, Ms. Reynolds, 8 you have nothing on --</p> <p>9 MS. REYNOLDS: I have nothing.</p> <p>10 THE COURT: Well, like Mr. Sexton, you 11 typically make yourself heard if you want to 12 be heard, and since I hadn't heard anything I 13 assumed you had no issues there. All right.</p> <p>14 So far as the scheduling order, it's 15 probably helpful in these cases to have one. 16 I'd like to have one unless it's just 17 impossible to have the same apply to all 18 cases. It would make more sense to me to do 19 it that way.</p> <p>20 As a general proposition, Mr. Shaw, I 21 will say to you because I don't think I have 22 had one with you, I frankly don't really care 23 what's in them as long as you-all agree on 24 them. But whatever you agree on I am going</p>

<p style="text-align: right;">37</p> <p>1 to enforce strictly. This notion that</p> <p>2 pretrial orders don't get enforced because</p> <p>3 nobody cares doesn't make any sense to me.</p> <p>4 And if we are going to have them, we are</p> <p>5 going to enforce them. So I encourage and</p> <p>6 want to get as much of a consensus as</p> <p>7 possible in the pretrial order, but all I am</p> <p>8 trying to say is, you know, make sure you</p> <p>9 know what you are doing because I am going to</p> <p>10 enforce them.</p> <p>11 Now, I say I am going to enforce them</p> <p>12 strictly. That is, if anybody wants them</p> <p>13 enforced. If you-all agree no matter what it</p> <p>14 says, if no one objects or if everyone agrees</p> <p>15 we are not going to proceed with one aspect</p> <p>16 or the other, that's fine. I mean, I am not</p> <p>17 going to independently enforce anything if no</p> <p>18 one wants it enforced. But if there is</p> <p>19 objection or there is an issue about</p> <p>20 enforcement of the order, then I typically</p> <p>21 try and enforce them strictly, but with the</p> <p>22 understanding ahead of time that I'd like to</p> <p>23 get as much consensus as possible to even --</p> <p>24 to get there.</p>	<p style="text-align: right;">39</p> <p>1 only thing we would need is the rulings on</p> <p>2 the outstanding demurrers and pleas and bars</p> <p>3 since those things are all now back before</p> <p>4 the Court so that we can get all the</p> <p>5 appropriate claims before the appropriate</p> <p>6 parties. And if the complaint needs to be</p> <p>7 amended in any way get that done sooner</p> <p>8 rather than later so that, as you had said</p> <p>9 earlier, just keep the case moving forward.</p> <p>10 THE COURT: So when do you want those</p> <p>11 rulings?</p> <p>12 MR. BYRD: I won't be so presumptuous</p> <p>13 to put time --</p> <p>14 THE COURT: I am just asking you when</p> <p>15 you need them.</p> <p>16 MR. BYRD: I am left without words as</p> <p>17 far as providing a date, Judge. I have to be</p> <p>18 full of candor here. But that was the only</p> <p>19 thing that I had wanted to bring up today as</p> <p>20 far as the Rule 4:13.</p> <p>21 MR. SEXTON: I have a couple of things</p> <p>22 to add to that. Judge, I don't -- do you</p> <p>23 recall the meeting we had back at the first</p> <p>24 hearing where we talked with how you do 19</p>
<p style="text-align: right;">38</p> <p>1 Now, in terms of particulars and</p> <p>2 details that we need to take up today, I will</p> <p>3 just -- let me just start over here.</p> <p>4 MR. BYRD: The only thing that I wanted</p> <p>5 to bring up, Your Honor, is we had -- I think</p> <p>6 we are making headway. We had talked this</p> <p>7 morning in some depositions about discovery</p> <p>8 and getting those things answered, so we are</p> <p>9 not really going to talk about outstanding</p> <p>10 interrogatories or anything like that.</p> <p>11 THE COURT: Good. I don't want to hear</p> <p>12 about it.</p> <p>13 MR. BYRD: I am sure you don't. The</p> <p>14 only thing is, of course, as you know, the</p> <p>15 cases have come back. All of them have come</p> <p>16 back. Mr. Sexton got the pleasure of going</p> <p>17 to Boston and arguing before the bankruptcy</p> <p>18 court up there, and they have all come back.</p> <p>19 The only thing really at this time --</p> <p>20 we had talked about the terms of a scheduling</p> <p>21 order this morning as well, and I think</p> <p>22 Ms. Reynolds' office is circulating one for</p> <p>23 us to review. The only thing we had talked</p> <p>24 about this morning is just to -- I guess the</p>	<p style="text-align: right;">40</p> <p>1 cases that all have some of the same facts?</p> <p>2 I believe we are still on track to do</p> <p>3 what we said we would do then, which was try</p> <p>4 the Wingate case as the lead case. There is</p> <p>5 a lot of reasons for that, because, one,</p> <p>6 Mr. Wingate is deceased, so you don't have</p> <p>7 ongoing medical questions, which is a big,</p> <p>8 big, question in some of these other cases.</p> <p>9 Some of these people are very, very sick</p> <p>10 still. Still on IV therapy and, you know --</p> <p>11 THE COURT: I am not going to rule on</p> <p>12 any of that right now.</p> <p>13 MR. SEXTON: But I am just saying -- I</p> <p>14 just wanted to say that there is a reason why</p> <p>15 we picked this one. But on those other ones,</p> <p>16 we have already gone through a number of the</p> <p>17 depositions of the local people. We have</p> <p>18 hit -- I think after today -- Ben took two of</p> <p>19 the depositions. I think we have taken all</p> <p>20 of the local -- the local representatives</p> <p>21 once in the Wingate case.</p> <p>22 On the next round, what I am thinking</p> <p>23 we would do is present an order consolidating</p> <p>24 for discovery purposes those other 17 or 18</p>

<p style="text-align: right;">41</p> <p>1 cases so that any depositions that are taken</p> <p>2 subsequently would be pretty much effective</p> <p>3 so we don't have to take 18 more depositions</p> <p>4 of Doctor O'Brien or Doctor Mathis. And I</p> <p>5 suspect that in doing that the parties may</p> <p>6 just decide to adopt some of the Wingate</p> <p>7 depositions as -- like, for example, Doctor</p> <p>8 O'Brien and Doctor Mathis. I don't think</p> <p>9 their stories are going to change. There may</p> <p>10 be some questions as to whether they remember</p> <p>11 the particular patient or whatever.</p> <p>12 So anyway, I just wanted to alert you</p> <p>13 to the fact that I think we are still on</p> <p>14 target for that, and we may submit some type</p> <p>15 of agreed order consolidating those things</p> <p>16 for discovery. And if you are interested, I</p> <p>17 could bring you up-to-date with the various</p> <p>18 things that have happened on the other level.</p> <p>19 Mr. Byrd said that I was arguing in</p> <p>20 bankruptcy court. It was actually in the</p> <p>21 federal district court up there in Boston,</p> <p>22 the MDL court, and it was really -- it was</p> <p>23 kind of a circus there for a while, because</p> <p>24 we had the cases in front of Your Honor.</p>	<p style="text-align: right;">43</p> <p>1 very same issues, and, of course, he knew</p> <p>2 about Judge Wilson's ruling at that time. So</p> <p>3 he is hearing all those same issues, and he</p> <p>4 ends up issuing an opinion that is at odds</p> <p>5 with the substance of Judge Wilson's opinion.</p> <p>6 He says I don't have to mandatorily abstain,</p> <p>7 I think there is related to jurisdiction, but</p> <p>8 I am going to discretionarily abstain on</p> <p>9 these cases at the moment because there has</p> <p>10 been no claim made against New England</p> <p>11 Compounding, and I am not even sure I really</p> <p>12 have jurisdiction, and it's a difficult</p> <p>13 opinion because he goes all over the place.</p> <p>14 He basically says he doesn't have</p> <p>15 jurisdiction, he doesn't think he has, but</p> <p>16 maybe he has it, and he is going to</p> <p>17 voluntarily abstain.</p> <p>18 So what I think that did, the way I</p> <p>19 interpreted it, is it left a big loophole,</p> <p>20 potential loophole, that if Insight Health</p> <p>21 Corp takes certain actions like pursues a</p> <p>22 claim against New England Compounding</p> <p>23 aggressively for like contribution, then the</p> <p>24 judge would want to revisit that.</p>
<p style="text-align: right;">42</p> <p>1 Then they got moved to federal court, so we</p> <p>2 were over in front of Judge Wilson with</p> <p>3 motions to remand, and at the same time we</p> <p>4 had motions to transfer to the multi-district</p> <p>5 litigation that were automatic that kicked in</p> <p>6 in that process, and then we also were</p> <p>7 fighting the bankruptcy trustees sort of</p> <p>8 magnet motion to suck us up there. So we</p> <p>9 were fighting this on all different kind of</p> <p>10 fronts.</p> <p>11 We argued the exact same issues in</p> <p>12 front of Judge Wilson on May 7, and he issued</p> <p>13 an opinion within a week ruling squarely in</p> <p>14 favor of Mrs. Wingate's position and the</p> <p>15 other plaintiffs on all those issues that</p> <p>16 there was no federal jurisdiction, that if</p> <p>17 there was, it was too late, and, you know --</p> <p>18 and notwithstanding all that, he said that</p> <p>19 the federal court needed to mandatorily</p> <p>20 abstain under the statute that's at issue,</p> <p>21 that there was mandatory abstention.</p> <p>22 So then I had the awkward position of</p> <p>23 going up the next week, May 14, and arguing</p> <p>24 in front of the Boston district court on the</p>	<p style="text-align: right;">44</p> <p>1 So we are in a really strange situation</p> <p>2 where at any moment there might be another</p> <p>3 motion by the trustee up there to drag us</p> <p>4 back up there again, even though the judge</p> <p>5 has not done so yet and has said proceed</p> <p>6 here.</p> <p>7 And to be honest, there is -- that</p> <p>8 raises a remarkably bizarre procedural issue</p> <p>9 as to how that would happen, because Judge</p> <p>10 Wilson has already said those cases are not</p> <p>11 coming through me, because he literally said</p> <p>12 the words I am not a conduit. So he has made</p> <p>13 it clear that he doesn't ever want to see</p> <p>14 these cases again and he is not going to be</p> <p>15 the conduit to take these Roanoke cases up to</p> <p>16 this far jurisdiction, and he doesn't think</p> <p>17 that's the law.</p> <p>18 So you have got a federal judge in</p> <p>19 Boston who may at one point attempt to issue</p> <p>20 an order to this Court to have it transfer a</p> <p>21 case under some absolutely undefined federal</p> <p>22 procedure. There is no federal procedure we</p> <p>23 can find. So I just -- I just alert you to</p> <p>24 this comedy crisis that is potentially on the</p>

<p style="text-align: right;">45</p> <p>1 horizon. And I -- I don't know whether it</p> <p>2 will or will not. I think a lot of people</p> <p>3 who thought they might want to be up there in</p> <p>4 that mess of bankruptcy and MDL have perhaps</p> <p>5 decided maybe they don't want to be there.</p> <p>6 And Insight may be one of those.</p> <p>7 But that's -- that's the status, and it</p> <p>8 is -- it's more federal and bankruptcy</p> <p>9 procedure than I ever wanted to know in my</p> <p>10 life we have had to figure out with regard to</p> <p>11 these things. It has been very academically</p> <p>12 interesting in this, but it hasn't given us a</p> <p>13 lot of comfort that we are firmly on any</p> <p>14 foundation in this Court, but we are going to</p> <p>15 proceed to trial, so...</p> <p>16 THE COURT: All right. Mr. Shaw, what</p> <p>17 do you want in terms of specifics in a</p> <p>18 scheduling order?</p> <p>19 MR. SHAW: Your Honor, we do need to</p> <p>20 sit down and discuss it, but one of the</p> <p>21 things we really need to look at is to give</p> <p>22 us plenty of time to get experts and respond</p> <p>23 to plaintiff's choice on experts in a normal</p> <p>24 90/60/30 discovery order, which just won't</p>	<p style="text-align: right;">47</p> <p>1 MS. REYNOLDS: I know, exactly. But it</p> <p>2 may be that there are -- there will be an</p> <p>3 amended complaint, and, certainly, Insight</p> <p>4 will file their answer, and we are going to</p> <p>5 have to file another answer so there is --</p> <p>6 you know, once the Court does that then there</p> <p>7 will be a series of pleadings again, and that</p> <p>8 may require a little bit more in the way of</p> <p>9 discovery. So I would just say that to the</p> <p>10 Court because we do have -- you know, if we</p> <p>11 do set deadlines, we will certainly need</p> <p>12 to know what our pleadings are. Thank you.</p> <p>13 THE COURT: Certainly.</p> <p>14 MR. SEXTON: Judge, can I comment on</p> <p>15 that as well?</p> <p>16 THE COURT: Sure. Why not?</p> <p>17 MR. SEXTON: At the hearing on the</p> <p>18 demurrers, you asked -- I don't know if it</p> <p>19 was me. I think it might have been</p> <p>20 Mr. Sullivan directly and then he looked to</p> <p>21 me or something. But I think the point was</p> <p>22 on the fraud count if you ruled in the way</p> <p>23 that the defendants were asking, would we</p> <p>24 want to amend, and I think it somehow had</p>
<p style="text-align: right;">46</p> <p>1 work in a case like this.</p> <p>2 THE COURT: I would tend to agree with</p> <p>3 that, and I think we typically have, like you</p> <p>4 good lawyers who work with these things</p> <p>5 understand the practicalities of them, and I</p> <p>6 am not going to -- you know, I want you-all</p> <p>7 to tailor make something that will work for</p> <p>8 both of you. That's exactly what I was</p> <p>9 saying before. I am not going to get</p> <p>10 involved in micromanaging that sort of stuff.</p> <p>11 You-all know it better than I do, you work</p> <p>12 with it every day more than I do, and I want</p> <p>13 you to reach a consensus on that.</p> <p>14 MR. SHAW: We will work together to get</p> <p>15 consensus, Your Honor.</p> <p>16 THE COURT: Ms. Reynolds?</p> <p>17 MS. REYNOLDS: Your Honor, may I just</p> <p>18 comment on the demurrers and the --</p> <p>19 THE COURT: Sure.</p> <p>20 MS. REYNOLDS: I don't know what the</p> <p>21 effect of the ruling will -- or rulings will</p> <p>22 be, but it may be --</p> <p>23 THE COURT: It depends on what they</p> <p>24 are.</p>	<p style="text-align: right;">48</p> <p>1 this impression that there was a suggestion</p> <p>2 that we had pled all the facts. We have</p> <p>3 certainly learned some additional facts that</p> <p>4 we think would apply to those. So to the</p> <p>5 extent that there ever was going to be a</p> <p>6 ruling on the fraud case in that regard, we</p> <p>7 would probably definitely want the</p> <p>8 opportunity to amend, to assert just a</p> <p>9 handful of additional facts that have come</p> <p>10 out in discovery.</p> <p>11 THE COURT: All right. Anything else</p> <p>12 from anyone?</p> <p>13 MR. SHAW: No, Your Honor.</p> <p>14 THE COURT: All right. Thank you-all.</p> <p>15 That concludes this matter. We will stand in</p> <p>16 recess.</p> <p>17 THE BAILIFF: Court stands in recess.</p> <p>18</p> <p>19 (3:51 p.m.)</p> <p>20</p> <p>21</p> <p>22 * * * * *</p> <p>23</p> <p>24</p>

CERTIFICATE
COMMONWEALTH OF VIRGINIA
CITY OF ROANOKE

I, Mary J. Butenschoen, RPR, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the proceedings were by me reduced to machine shorthand, afterwards transcribed by me by means of computer, and that to the best of my ability the foregoing is a true and correct transcript of the proceedings as aforesaid.

I further certify that these proceedings were taken at the time and place specified in the foregoing caption.

I further certify that I am not a relative, counsel or attorney for either party, or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Roanoke, Virginia, on the 13th day of February, 2014.

MARY J. BUTENSCHOEN, RPR
NOTARY PUBLIC

My Commission expires May 31, 2016.
Number 228402

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